

By: White

H.B. No. 2849

A BILL TO BE ENTITLED

AN ACT

relating to the punishment for property offenses involving criminal mischief and graffiti.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 28.03(b), (f), (h), (i), and (j), Penal Code, are amended to read as follows:

(b) Except as provided by Subsections (f), ~~[and]~~ (h), (i), and (j), an offense under this section is punishable as provided by Section 28.09 [+

~~[(1) a Class C misdemeanor if:~~

~~[(A) the amount of pecuniary loss is less than \$50; or~~

~~[(B) except as provided in Subdivision (3)(A) or (3)(B), it causes substantial inconvenience to others;~~

~~[(2) a Class B misdemeanor if the amount of pecuniary loss is \$50 or more but less than \$500;~~

~~[(3) a Class A misdemeanor if:~~

~~[(A) the amount of pecuniary loss is \$500 or more but less than \$1,500; or~~

~~[(B) the actor causes in whole or in part impairment or interruption of any public water supply, or causes to be diverted in whole, in part, or in any manner, including installation or removal of any device for any such purpose, any public water supply, regardless of the amount of the pecuniary~~

1 ~~loss;~~

2 ~~[(4) a state jail felony if the amount of pecuniary~~
3 ~~loss is:~~

4 ~~[(A) \$1,500 or more but less than \$20,000;~~

5 ~~[(B) less than \$1,500, if the property damaged or~~
6 ~~destroyed is a habitation and if the damage or destruction is caused~~
7 ~~by a firearm or explosive weapon;~~

8 ~~[(C) less than \$1,500, if the property was a~~
9 ~~fence used for the production or containment of:~~

10 ~~[(i) cattle, bison, horses, sheep, swine,~~
11 ~~goats, exotic livestock, or exotic poultry; or~~

12 ~~[(ii) game animals as that term is defined~~
13 ~~by Section 63.001, Parks and Wildlife Code; or~~

14 ~~[(D) less than \$20,000 and the actor causes~~
15 ~~wholly or partly impairment or interruption of public~~
16 ~~communications, public transportation, public gas or power supply,~~
17 ~~or other public service, or causes to be diverted wholly, partly, or~~
18 ~~in any manner, including installation or removal of any device for~~
19 ~~any such purpose, any public communications or public gas or power~~
20 ~~supply;~~

21 ~~[(5) a felony of the third degree if the amount of the~~
22 ~~pecuniary loss is \$20,000 or more but less than \$100,000;~~

23 ~~[(6) a felony of the second degree if the amount of~~
24 ~~pecuniary loss is \$100,000 or more but less than \$200,000; or~~

25 ~~[(7) a felony of the first degree if the amount of~~
26 ~~pecuniary loss is \$200,000 or more].~~

27 (f) An offense under this section is a state jail felony if

1 the damage or destruction is inflicted on a place of worship or
2 human burial, a public monument, or a community center that
3 provides medical, social, or educational programs and the amount of
4 the pecuniary loss to real property or to tangible personal
5 property is less than \$30,000 [~~\$20,000~~].

6 (h) An offense under this section is a state jail felony if
7 the amount of the pecuniary loss to real property or to tangible
8 personal property is \$3,000 [~~\$1,500~~] or more but less than \$30,000
9 [~~\$20,000~~] and the damage or destruction is inflicted on a public or
10 private elementary school, secondary school, or institution of
11 higher education.

12 (i) An [~~Notwithstanding Subsection (b), an~~] offense under
13 this section is a felony of the first degree if the property is
14 livestock and the damage is caused by introducing bovine spongiform
15 encephalopathy, commonly known as mad cow disease, or a disease
16 described by Section 161.041(a), Agriculture Code. In this
17 subsection, "livestock" has the meaning assigned by Section
18 161.001, Agriculture Code.

19 (j) An [~~Notwithstanding Subsection (b), an~~] offense under
20 this section is a felony of the third degree if:

21 (1) the tangible property damaged, destroyed, or
22 tampered with is transportation communications equipment or a
23 transportation communications device; and

24 (2) the amount of the pecuniary loss to the tangible
25 property is less than \$150,000 [~~\$100,000~~].

26 SECTION 2. Sections 28.08(b) and (d), Penal Code, are
27 amended to read as follows:

1 (b) Except as provided by Subsection (d), an offense under
2 this section is punishable as provided by Section 28.09[+]

3 [~~(1) a Class B misdemeanor if the amount of pecuniary~~
4 ~~loss is less than \$500;~~

5 [~~(2) a Class A misdemeanor if the amount of pecuniary~~
6 ~~loss is \$500 or more but less than \$1,500;~~

7 [~~(3) a state jail felony if the amount of pecuniary~~
8 ~~loss is \$1,500 or more but less than \$20,000;~~

9 [~~(4) a felony of the third degree if the amount of~~
10 ~~pecuniary loss is \$20,000 or more but less than \$100,000;~~

11 [~~(5) a felony of the second degree if the amount of~~
12 ~~pecuniary loss is \$100,000 or more but less than \$200,000; or~~

13 [~~(6) a felony of the first degree if the amount of~~
14 ~~pecuniary loss is \$200,000 or more].~~

15 (d) An offense under this section is a state jail felony if:

16 (1) the marking is made on a school, an institution of
17 higher education, a place of worship or human burial, a public
18 monument, or a community center that provides medical, social, or
19 educational programs; and

20 (2) the amount of the pecuniary loss to real property
21 or to tangible personal property is less than \$30,000 [~~\$20,000~~].

22 SECTION 3. Chapter 28, Penal Code, is amended by adding
23 Section 28.09 to read as follows:

24 Sec. 28.09. GENERAL PENALTY. (a) An offense under Section
25 28.03 or 28.08 is:

26 (1) a Class C misdemeanor if:

27 (A) the amount of pecuniary loss is less than

1 \$100; or

2 (B) the offense was committed under Section 28.03
3 and, except as provided by Subdivision (3)(B) or (4)(C)(iii) of
4 this subsection, it causes substantial inconvenience to others;

5 (2) a Class B misdemeanor if the amount of pecuniary
6 loss is \$100 or more but less than \$1,500;

7 (3) a Class A misdemeanor if:

8 (A) the amount of pecuniary loss is \$1,500 or
9 more but less than \$3,000; or

10 (B) the offense was committed under Section 28.03
11 and the actor causes wholly or partly impairment or interruption of
12 any public water supply, or causes to be diverted wholly, partly, or
13 in any manner, including installation or removal of any device for
14 any such purpose, any public water supply, regardless of the amount
15 of the pecuniary loss;

16 (4) a state jail felony if:

17 (A) the amount of pecuniary loss is \$3,000 or
18 more but less than \$30,000;

19 (B) the offense was committed under Section 28.03
20 and the amount of pecuniary loss is less than \$3,000, if the
21 property damaged or destroyed was:

22 (i) a fence used for the production or
23 containment of:

24 (a) cattle, bison, horses, sheep,
25 swine, goats, exotic livestock, or exotic poultry; or

26 (b) game animals, as that term is
27 defined by Section 63.001, Parks and Wildlife Code; or

1 (ii) a habitation and the damage or
2 destruction was caused by a firearm or explosive weapon; or

3 (C) the offense:

4 (i) was committed under Section 28.03;

5 (ii) the amount of pecuniary loss is less
6 than \$30,000; and

7 (iii) the actor causes wholly or partly
8 impairment or interruption of public communications, public
9 transportation, public gas or power supply, or other public
10 service, or causes to be diverted wholly, partly, or in any manner,
11 including installation or removal of any device for any such
12 purpose, any public communications or public gas or power supply;

13 (5) a felony of the third degree if the amount of
14 pecuniary loss is \$30,000 or more but less than \$150,000;

15 (6) a felony of the second degree if the amount of
16 pecuniary loss is \$150,000 or more but less than \$300,000; or

17 (7) a felony of the first degree if the amount of
18 pecuniary loss is \$300,000 or more.

19 (b) The terms "public communication, public transportation,
20 public gas or power supply, or other public service" and "public
21 water supply" shall mean, refer to, and include any such services
22 subject to regulation by the Public Utility Commission of Texas,
23 the Railroad Commission of Texas, or the Texas Commission on
24 Environmental Quality or any such services enfranchised by the
25 State of Texas or any political subdivision thereof.

26 (c) When more than one item of tangible property, belonging
27 to one or more owners, is damaged, destroyed, or tampered with in

1 violation of Section 28.03 pursuant to one scheme or continuing
2 course of conduct, the conduct may be considered as one offense, and
3 the amounts of pecuniary loss to property resulting from the damage
4 to, destruction of, or tampering with the property may be
5 aggregated in determining the grade of the offense.

6 (d) When more than one item of tangible property, belonging
7 to one or more owners, is marked in violation of Section 28.08
8 pursuant to one scheme or continuing course of conduct, the conduct
9 may be considered as one offense, and the amounts of pecuniary loss
10 to property resulting from the marking of the property may be
11 aggregated in determining the grade of the offense.

12 (e) In this section:

13 (1) "Explosive weapon" means any explosive or
14 incendiary device that is designed, made, or adapted for the
15 purpose of inflicting serious bodily injury, death, or substantial
16 property damage, or for the principal purpose of causing such a loud
17 report as to cause undue public alarm or terror, and includes:

18 (A) an explosive or incendiary bomb, grenade,
19 rocket, and mine;

20 (B) a device designed, made, or adapted for
21 delivering or shooting an explosive weapon; and

22 (C) a device designed, made, or adapted to start
23 a fire in a time-delayed manner.

24 (2) "Firearm" has the meaning assigned by Section
25 46.01.

26 SECTION 4. The following laws are repealed:

27 (1) Section 28.03(d), Penal Code; and

1 (2) Sections 28.03(g)(1) and (2), Penal Code.

2 SECTION 5. The change in law made by this Act applies only
3 to an offense committed on or after the effective date of this Act.
4 An offense committed before the effective date of this Act is
5 governed by the law in effect on the date the offense was committed,
6 and the former law is continued in effect for that purpose. For
7 purposes of this section, an offense was committed before the
8 effective date of this Act if any element of the offense occurred
9 before that date.

10 SECTION 6. This Act takes effect September 1, 2013.